

of the Government has been explained. Mr. Walmseley and Mr. Mathai have made out a very strong case, and Government are prepared to accept the resolution, and they propose to take the matter to the notice of the India Government.

Mr. M. K. Devassy (Adur): I want to know whether the Government has considered the question of the agriculturists.

Mr. President: Government have no apprehension that, if steps are taken in this direction, the agriculturists will in any way suffer.

The resolution was accepted by Government.

**15. Refund of 50 per cent court fees to plaintiff
in uncontested suits and reduction of costs
in ex-parte suits.**

Mr. M. K. Devassy (Adur): *"This Council recommends to the Government to so amend the provisions of the Cochin Court Fees Act and the Cochin Code of Civil Procedure as to effect a refund of 50 per cent of the usual court fees to the plaintiff if the suit is decreed uncontested and to provide for a proportionate reduction in the costs which the ex-parte defendant might be ordered to pay."*

I don't think that there is any necessity for any elaborate speech on the matter, except for me to point out to those hon'ble members of this House who are not much acquainted with the courts of law the full implication of the resolution which I have tabled.

As we get to-day, 6½ per cent is the court fee now imposed on money suits. While no distinction is maintained between uncontested suits and contested suits in the matter of court fees, a certain amount of distinction is maintained with regard to the fee of vakils. That there is a real necessity to maintain this distinction is clear in that the principle has been accepted at least with regard to vakils fees. When the suit is contested, a larger amount of worry and a larger amount of time has to be devoted both by the court as well as those who are concerned with the case than when it is uncontested. It is with this view that all Governments have been considering the feasibility of discouraging contested suits and encouraging *ex parte* suits as far as possible. I wish to point out in this connection that in olden times litigation was an exception. But now litigation has become the rule and absence of litigation has become the exception. Contest comes because there is no difference maintained

between the uncontested and contested suits. The defendant thinks that he can take some more time by putting forward frivolous contentions taking the time of the court and prolonging litigation. I believe it will be a real service to those people who are honest debtors and who are prepared to pay their debts except for their incapacity to pay, if some distinction is made between contested and uncontested suits in the matter of court fees. In fact, the principle underlying the resolution that I move has been accepted by the Travancore Government. It is the practice there that when a suit is instituted the full court fee is paid, and when the suit is decreed uncontested, half the court fee is refunded to the plaintiff and a proportionate reduction is given to the defendant in the matter of costs. So, if the Government is pleased to accept this resolution, it will be a relief to the poor people.

Mr. A. V. Moothedan (*Chalakkudi*): What is the practice obtaining in British India?

Mr. C. A. Kunjunni Raja (*Advocate-General*): Government have to oppose this resolution. The main reason urged for the acceptance of the resolution is that in the case of vakils' fee a reduction is made if the suit is not contested, and it is also stated that people are simply contesting, to gain time, even though on contest they have to pay more vakils' fee since there is no reduction of court fee in the case of uncontested suits, and that if some reduction was given, people are not likely to contest. Secondly it is urged some reduction is given in Travancore. These are the two reasons urged for the acceptance of the resolution in this House. First of all, if we go by the vakils' fee, whereas there is no separate court fee, there is a separate vakils' fee in the matter of execution. It is not correct to assume that the court fee on the original side is simply for the adjudication of the claim; it takes in the execution process also. Most of the lawyer members of this House will know that in the matter of execution a party has to spend only 8 annas, and on an 8 anna petition much more time will have to be spent sometimes on the execution side than what is taken for the adjudication of this case on the original side before the execution. So that the criterion for court fee is not the amount of time that is spent by the court in the matter of disposal of a case. It is for the whole adjudication and for the realisation of the money after adjudication that the whole court fee is paid. In the case of the vakils' fee, as I have already stated, the House will be pleased to find that there is a separate vakils' fee to be paid in the matter of execution. So that there is no meaning in putting forward that as an argument. This House will

be pleased to find that court fee is based on the valuation of the claim in the plaint. You will find from a reference to the schedule in the Cochin Court Fees Act, II of 1080 that from 5 annas the court fee runs up to Rs. 3,000 with different variations for different amounts. The time taken up by the court for the disposal of a case is not stated to be the criterion at all. I thought the hon'ble member for Adur was relying to a large extent on the time-worn argument that since much time is not necessary for an uncontested case, why not give some reduction. Time is not the test to be applied at all. If we accept that court fee is to be on the amount of time that is necessary for disposal, it will be a difficult process. The court has to record the amount of time that has been spent on a particular case and the equation of the judge will be a prominent factor in fixing the court fee. The time taken by the staff of the court has also to be calculated. The time taken by lawyers in the conduct of the case will be an important factor. Sometimes some judges will be slack, and these judges will take more time and so parties will have to pay more. A slow judge will be an asset to the finances of the State. So that, time is not the test. The whole test is upon the valuation of the claim, that is the amount that has to be realised. Further if time is the test, when is court fee to be realised? It cannot be at the time of filing, for then there is no basis for the amount of time necessary for the disposal of the case. This House will be pleased to find that this test of the payment of court fee on the basis of the valuation of the claim is accepted throughout British India, in Mysore, in Travancore and in all the native States. In all court fee enactments throughout the world you will find that the time taken by the court is not the test for determining the amount of court fees. Then it is urged that in Travancore some reduction is given. There is much difference in court fees levied in Travancore and in Cochin. With regard to the gradation of the court fees, the Travancore Regulation, VI of 1087, is different from our Court Fees Act, II of 1080. You will find our Act starts from Rs. 5 up to Rs. 100 with a variation of Rs. 5; then from Rs. 100 to Rs. 1,000 the variation is Rs. 10; then from Rs. 1,000 to Rs. 5,000 the variation is Rs. 100. Then the variation is Rs. 250, then Rs. 500, then Rs. 1,000 and so on. In Travancore the variation is from zero to Rs. 100, then from Rs. 100 to Rs. 7,000 the variation is Rs. 100 and then from Rs. 7,000 the variation is Rs. 700 up to Rs. 35,000 and then the variation is Rs. 1,750 and so on. The higher gradation will, in Travancore, account for a larger realisation of the court fee. In other matters also in Travancore higher fixed fees are levied. To take an example, in kaikaryam suits in Travancore the party has normally to pay a court fee of Rs. 40, while in Cochin

a court fee of Rs. 10 will be sufficient. If we go into details in several respects there is difference in the matter of court fees between Travancore and Cochin. There is no meaning in asking the Government to take one provision from the Travancore Regulation to be imported here without looking into all the provisions of the corresponding enactment. Does this House want the Government to model our administration whole-sale on Travancore lines? We have been following in this respect British India and our Act is modelled on Act VII of 1870 and I think it will be a better model for us to follow. These are the two reasons urged by the hon'ble member and these do not stand scrutiny. This House need not be told reduction means loss of revenue.

Mr. V. J. Mathai (Planters): Sir, I don't rise up to ask our Government to follow the Travancore Government or any other Government for the matter of that. Nor is it a question of the exact apportionment of the hours spent in the adjudication of a suit. Our Government has never considered this question from that aspect. It is all a question of meting out justice between man and man, irrespective of other considerations, and the actual money paid as court fees is no criterion. It is not also correct to say that we should not draw any analogy from the procedure obtaining in Travancore, and the point of difference drawn between Travancore and Cochin that court fees are collected in excess in Travancore, is also not correct. For, in the main, we find that in Travancore the court fees are less, as far as my own knowledge goes, it is only 5 per cent that they are collecting, whereas we are collecting 6½ per cent. So, we cannot say, that because in Travancore more court fees are levied, there is no case for this resolution being accepted. Mr. Devassy I suppose has tabled this resolution in a spirit of supplication to the Government, that the Government out of its great kindness will be pleased to understand the present plight of the litigants. At present, it has to be admitted that both the debtors and the creditors are on an equal footing. So far as the creditor is concerned, he does not find the money to pay the court fees. So far as the debtor is concerned, whatever the creditor pays Rs. 5 or Rs. 10 as court fees the debtor has to bear that burden also. It is that aspect of the question which has to be borne in mind. Whatever court fee is paid by the creditor is debited against the debtor and ultimately the debtor has to pay that also. Therefore, it is not from the point of view of the creditor alone that this is made. It is from the point of view of the depressed debtors whose case the Government has been pleased to consider by several beneficial

enactments. If you will collect $6\frac{1}{2}$ per cent now and if you will refund $3\frac{1}{2}$ per cent if the case is not contested, the main advantage is that the debtor will have to pay only less than what he would have to pay otherwise. It is in that spirit that this resolution is moved, and my friend Mr. Devassy said that it is in this spirit. Therefore, we, the representatives of the poor debtors—most of our people are debtors—pray that the Government will be pleased to consider this question. Certainly it is an advantage to the debtor. There is another advantage. There will be less over-crowding in courts. Now, there is no reward given for a directly honest and straight-forward man. If a case is brought against him in a court of law, and if the Government gives him no reward for behaving as an honest man, he will naturally try to prolong it to gain time. Suppose he confesses that he has to pay money and that he will pay it, he is not given any rewards. What then happens is this. He will tell the creditor "I have to pay the whole court fee. Alright I will apply for time". I have heard so many saying like that. Ultimately the debtor himself loses. If the case is prolonged, there will be more expenses and in some cases the debtor will have to pay by way of costs more than the principal and interest. It is therefore in a spirit of supplication that I for my part request the Government to consider this question.

I will be the last man to request this Government to follow all that has been followed in Travancore, because I am too proud of my own State to ask this Government to follow Travancore in all respects. I only say that the Travancore Government in this respect has found that some sort of relief is necessary to honest debtors who really confess their debts. This resolution is intended for the benefit of the debtor, and the debtor is as much the subject of His Highness the Maharaja as the creditor. Therefore it is only a request to extend His Highness's kindness to the poor debtors. It is in that spirit that I support this resolution.

Mr. K. Kochukunhan Kaimal (Vadakkancheri): Sir, the object aimed at by this resolution is only one by way of granting relief to the poor litigants. We find that reliefs are always sought for especially in these days when the depression is so keenly felt by all classes of people and also by the litigant public. Now, the considerations that were referred to by the hon'ble member for Law which go to fix the fees are not at all taken into account. I think that the proportion or ratio has been fixed almost arbitrarily, no doubt relying upon practices obtaining in other parts also. Except if it be by way of fiscal law, I do not think there is any other consideration that the Government may have taken into account in fixing the rates of court fee

to be paid in respect of various classes of suits. Government no doubt gets a revenue by way of court fees. Irrespective of the consideration of the time spent or of the labour spent, Government has no doubt fixed certain ratios. The times being very bad, the people now feel the hardship and that they have to bear the heavy costs which they have to suffer on account of these litigations. I can understand that a litigant who is frivolously contesting and who encourages frivolous litigations should be penalised. But debtors who are only unable to pay but who do not want to defeat the claim of the creditors should be given some relief by way of reducing the costs which they may have ultimately to incur in the suit.

The Advocate-General refers to varying practices in different countries such as Travancore and British India. Even that also will not support the position taken up by the hon'ble member for Law. In British India, the court fee in different suits vary as the court fees in different suits vary in our State also. So far as suits relating to lands are concerned, while the proportionate court fee is much less in British India, the court fee is certainly much higher in such suits in the Cochin State, because we have to pay court fee 15 times the annual pottom, while the practice there, so far as I understand, is by striking a proportion on the basis of the land revenue payable upon the property. So that even in British India, while no doubt there is some increase with regard to court fee in regard to money suits, so far as suits relating to lands are concerned, it is much less, while in our courts, the court fee in respect of suits regarding money is not so much as in British India. So that there is no use following the practice obtaining either in Travancore or in British India, except to some extent to come to an arbitrary decision. The present object is only to request the Government to give some relief to the honest litigants who are suffering on account of the depression. So I submit that due consideration should be given by the Government so as to reduce the court fees in the class of cases contemplated by this resolution, at least as a measure of relief to litigants. I therefore second this resolution.

Mr. M. K. Devassy (Adur): I did not expect such a violent opposition from the hon'ble member for Law. Of course I have heard oppositions of a different character from him a few years ago when he was once a member on this side of the House. I am sure if he were now on this side he would never have advanced the arguments which he has now advanced. So, whatever arguments he has advanced, I take it, are due more to the

position he occupies now than to the weight or validity or the conviction underlying the arguments which he has addressed. I was little surprised when he said that we should not imitate the Travancore Government. I fully agree with him. But I am reminded, Sir, of an analogy. Our Thunchat Ezhuthassan wrote 'Karna Parva' over a cup of toddy. Now, I ask the hon'ble member, because Thunchat Ezhuthassan was drunk, when he wrote that particular poem, will you refuse to read that work? Similarly, the Travancore Government or any Government may have its faults, but it should not deter any Government from following whatever good aspect that we find in the administration. I believe that this House will be the last to say that the system obtained in Travancore of giving free ferry transport to passengers should not be followed in Cochin, because it is found in Travancore.

One of the arguments advanced by the hon'ble member for Law was that it is not on considerations of time, that this matter of fixing court fee is based. There is a fundamental difference between the administration of criminal justice and the administration of civil justice. So far as criminal justice is concerned, every civilised State takes it as its duty to administer justice irrespective of the trouble underlying it, irrespective of the cost incurred and irrespective of the time taken by it. But so far as civil justice is concerned, the Government makes a difference, and says that the parties should pay for the trouble taken on behalf of administration of civil justice, because they do not think the dispensation of civil justice as much necessary as of criminal justice. That is why we find in civil courts, court fees being fixed much higher than in criminal courts. "Where more time is taken for the adjudication of suits, the more should be the court fees that should be levied" is one of the criterions though not the only criterion. The hon'ble member for Law was stating that there is difference between the court fee for the adjudication of suits and the court fee for execution. I ask my hon'ble friend, is there not some difference maintained with regard to the vakil's fees? It is based upon the time taken up for it. Will the hon'ble member for Law deny the fact that the time taken up for a contested suit is 10, 15 or 20 times more than the time taken for an uncontested suit? What happens in the case of a contested suit is this. As soon as a suit is instituted, summons have to be issued, written statements have to be put in, issues have to be framed, documents have to be called for, and then innumerable adjournments follow for evidence. So that for a proper adjudication of a contested suit, at least it requires more than a year. If that is the case, I ask the hon'ble member for Law, can you not really think of dispensing with

many of the additional courts, if the resolution is accepted? It being solely a question of time and trouble, and since the Government has already recognised the principle in the matter of vakils' fees, I fail to understand, why they should make a distinction. If the vakil is less troubled, the judge is also less troubled and the time of the court is saved. But I don't wish to base my arguments entirely upon this technicality. The point that I wish to emphasise is that in fact many of the cases that you now get are cases which will really go uncontested and cases which affect the poor people. If any contest comes, it is only because, they do not find any practical difference between a contested and uncontested case, and because they find that they can gain time. In fact, as a result of the system now obtaining, sometimes the cost of litigation mount up even to the same level of the suit amount. I believe that it will be a real service that the Government can do to the poor if the resolution is accepted.

Mr. K. R. Viswambharan (*Ezhuvas-Talappalli*): What would be the approximate loss of revenue by reducing this?

Mr. President: That will be impossible to calculate. We do not know how many suits will be contested and how many suits uncontested.

Mr. C. A. Kunjunni Raja (*Advocate-General*): No information has been gathered, nor is it possible. For the information of the House I may say that the High Court has sent in a communication to the effect that there will be a substantial loss of revenue.

Mr. T. P. Poullose (*Kanayannur*): In Travancore, is it in uncontested suits or compromise suits that a reduction is allowed?

Mr. C. A. Kunjunni Raja (*Advocate-General*): It is stated in the Travancore Court Fees Regulation. "Either compromise or judgment on concession, and there is no reduction in the case of uncontested suits."

The House rose for lunch at 1.5 p. m. and re-assembled at 2.30 p. m. with the Deputy President in the Chair.

Mr. C. A. Kunjunni Raja (*Advocate-General*): I may inform the House that on account of the temporary depression, this permanent relief of refund cannot be given. The Government have considered the question of depression and several reliefs have already been granted and even the Antony Committee has not recommended that court fee should be refunded in a case contemplated by this resolution. Nothing can be done

on that ground. Now the mover of the resolution in his reply seems to accept the principle that the court fee has to be fixed on the time occupied by the court. If that principle is accepted, as I have already shown, it will land us in several difficulties. First of all, the court will have to fix the time in every case and also the time taken by the subordinate staff; parties will have to spend more if more time is taken in court. It is not advantageous to the lawyer also because the conscientious lawyer has to see that the court fee is reduced by reducing the time occupied by the court for the disposal of a case. So far as the Government is concerned, fresh court fee will have to be levied in execution instead of the 8 annas now levied for in execution. Just as in execution the lawyer is paid something more towards his fees. As I already said, the court fee paid at the institution of the plaint takes into account the subsequent help for realization through the arrears of the court. It is not possible to give any relief on the new ground of depression urged by some of the hon'ble members of the House.

മിസ്റ്റർ വി. പി. കണ്ണപിള്ള : തിരുവിതാംകൂറിലും ബ്രിട്ടീഷിലും വസ്തു സംബന്ധമായ കേസുകൾക്ക് കൊച്ചിയേക്കാൾ കോട്ട് ഫീസ് വളരെ കുറവാണ് എന്നുള്ളത് ഖത്തമാനപ്പെട്ട ഗവണ്മെന്റിനും അറിയാമോ?

മിസ്റ്റർ സി. എ. കുഞ്ഞുണ്ണിരാജാ : എല്ലാ കേസുകൾക്കും അങ്ങിനെ കുറവിലു. ഫിക്സറഫീസ് ചില കേസുകൾക്കെല്ലാം അവിടെയുണ്ട്. ചിലതിനെയും ഇവിടത്തേക്കാൾ വളരെ കൂടുതലാണ്. മേനിസ്റ്റിനെ സംബന്ധിച്ച ബ്രിട്ടീഷിൽ റൂറുകൾ പരിനോന്നേക്കാൽ രൂപായാണ് കോട്ട് ഫീസുള്ളത്. ഇവിടെ ആരേക്കാൽ രൂപ മാത്രമാണ്. നിരക്കിൽ തിരുവിതാംകൂറിലും അല്പം വ്യത്യാസമുണ്ട്.

മിസ്റ്റർ വി. പി. കണ്ണപിള്ള : വസ്തുസംബന്ധമായുള്ള എല്ലാ കേസുകൾക്കും കോട്ട് ഫീസ് ഇവിടത്തേക്കാളൊക്കെ അവിടെ വളരെ കുറവാണ് എന്നുള്ളത് ഗവണ്മെന്റിനറിയാമോ?

മിസ്റ്റർ സി. എ. കുഞ്ഞുണ്ണിരാജാ : എവിക്ഷൻ സൂട്ടുകളിൽ മാത്രം കുറച്ചെല്ലാം വ്യത്യാസമുണ്ട്.

The resolution was put and carried.

16. Levy of license fees on Motor Boats, Valloms, Etc., in four instalments.

മിസ്റ്റർ ബി. എം. പീറ്റർ : പ്രസിഡണ്ട് സർ, “മോട്ടോർബോട്ടുകൾ, വള്ളങ്ങൾ, വഞ്ചികൾ ഇതുകളുടെ ലൈസൻസ് ഫീസ് ഒരാഗവ്യവായി പിരിച്ചുവരുന്ന ഇപ്പോഴത്തെ സമ്പ്രദായം ഭേദപ്പെടുത്തി ആണ്ടിൽ നാലു തവണകളായി ടി ഫീസ് അടച്ചുതീർത്തുവെക്കുന്ന സൗകര്യം കൊടുക്കണമെന്നു ഖത്തമാനപ്പെട്ട ഗവണ്മെന്റിനോടു തുപാൽ ചെയ്യുന്നു.”